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No. 554

Supreme Court of the United States

OCTOBER TERM, 1947

JACK PRINCIPALE,

Petitioner,

—v.—

GENERAL PUBLIC UTILITIES CORPORATION as Successor to Associated Gas and Electric Company and ASSOCIATED GAS AND ELECTRIC CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JACK PRINCIPALE,
Petitioner pro-se.

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No. 59

Supreme Court of the United States

OCTOBER TERM, 1947

JACK PRINCIPALE,

Petitioner,

—v.—

GENERAL PUBLIC UTILITIES CORPORATION as Successor to Associated Gas and Electric Company and ASSOCIATED GAS AND ELECTRIC CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

January 21, 1948.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner Jack Principale as a holder in due course of the 6% and 7% Convertible Obligations hereinafter referred to as COs due 2002, Series A and $7.00 dividend Series Preferred Stock of Associated Gas & Electric, hereinafter referred to as AGECO prays that a writ of certiorari

issue to review the decision of the Circuit Court of Appeals, Second Circuit, decided November 20, 1947 and the Order entered by that Court on the 23rd day of December denying the claim of the petitioner:

1. Participation under the correct interpretation of the Plan of Reorganization of Associated Gas and Electric Company (Ageco).

2. Participation as a "Statutory successor of an original holder by due process of law.

3. Participation because the assets are not sufficient to provide in full for senior claimants (securities owned by the petitioner).

The petitioner is the holder of 6% and 7% Convertible Obligations due 2002, Series A, and $7.00 Dividend Series Preferred Stock, Series A of Ageco. The Plan of Reorganization of Ageco as approved by the SEC and by the lower court on January 1, 1946, provided for the participation of *such* securities in the following language:

> "Such of the following securities of Ageco (senior Convertible Obligations) as were issued in exchange for the securities enumerated in Item 7 (Convertible Debenture Certificates) *and* as remain in the hands of Original Holders." (See pages 3 and 4, Excerpts From Plan of Reorganization—Appendix to Appellant's Brief.)

The Opinion of the Circuit Court of Appeals has not taken into consideration the questions presented by the petitioner in his brief, reply brief and supplemental memorandum.

A. *Summary Statement of the Matters Involved.*

On May 10, 1945, a Summary of the Plan of Reorganization of Associated Gas and Electric Company was issued to the petitioner stating * * * that the assets of Ageco were not sufficient to provide in full for senior claimants.

The Plan of Reorganization of Ageco which provides for the participation of such securities as are held by the petitioner reads as follows:

> "Such of the following securities of Ageco (Senior COs and preferred stock) as were issued in exchange for the securities enumerated in item 7 Convertible Debenture Certificates hereinafter referred to as (CDCs) and as remain in the hands of original holders."

In compliance with the terms of the Plan of Reorganization of Ageco which provides for the participation of "Such Senior Convertible Obligations and Preferred Stocks as are held by the petitioner, as were issued in exchange for the securities enumerated in Item 7 (CDCs), these securities were submitted to the City Bank Farmers Trust Company, Exchange Agent for exchange for the common stock of General Public Utilities Corporation, as provided under the language of the Plan and also as a "Statutory successor of an original holder by due process of law. The claim was expunged.

In pursuance of Orders Nos. 441 and 691, these proceedings were commenced.

The lower courts disallowed the claims on the following grounds:

I. That the securities in question were acquired in the open market by purchase during or subsequent to 1939.

II. That none of the securities held by the claimant (COs) were acquired in exchange for (CDCs).

III. That the securities in question were assigned to the claimant as evidenced by the form on the reverse side of the securities (page 9 of Appendix to Appellant's Brief).

IV. That the claim asserted herein is based upon an incorrect interpretation of Article II, paragraph 6, subdivision 8 of the Plan of Reorganization, which provides for the participation of such securities as are held by the claimant, in the following language:

> "Such of the following securities of Ageco (COs) as were issued in exchange for the securities enumerated in Item 7 (CDCs) and as remain in the hands of original holders."

V. That the reason why "Original Holders" were granted participation and "Non-Original Holders" were excluded was because of a *theory* that these holders may have a claim for rescission or damages based on fraud or misrepresentation in connection with the exchange of Convertible Debenture Certificates for Convertible Obligations.

VI. That under a New York law "a claim for fraud or misrepresentation in connection with an obligation evidencing a debt does not pass merely with the transfer of the obligation itself, where there are lacking special words of assignment; forecloses non-original holders of COs, or whatever series, from asserting any such claim." *Elias* v. *Clarke,* 143 F. 2d 640, 644, cert. denied 323 U. S. 778; *In re Associated Gas & Electric Co.,* 149 F. 2d 996, 1007, cert. denied sub. *Elias* v. *Clarke,* 326 U. S. 736.

VII. That the petitioner is not a "Statutory successor of an original holder."

B. *Questions Presented.*

Unfairness of participation under the plan as between the holders of the Convertible Obligation Holders of Ageco due 2002, 6%, 6½% and 7% and Preferred stocks of the same series such as are held by the petitioner.

I. Where a statement issued to the petitioner that certain holders of the above securities such as he has would be deprived of his rights to participate under the Plan of a security evidencing a debt, while another group of the same class of security holders would be allowed participation because the *assets were not sufficient to provide in full,* would the fact that the Consolidated Assets of Ageco on the date of the consummation of the Plan amounted to the sum of $772,792,493.51 as shown by the corporation statement, hereto annexed, marked Schedule A, allowing sufficient asset coverage prove fraudulent, thereby allowing the Petitioner the same rights to participate under the plan on a pro rata basis with the rest of the creditors and stockholders of the same class?

II. The Plan of Reorganization of Ageco for senior securities such as the petitioner holds provides participation in the following language:

"Such of the securities of Ageco (COs) as were issued in exchange for the securities in Item 7 (CDCs) equals participation in the Plan."

According to the language any holder of *such* securities COs which were exchanged for CDCs is a par-

ticipant under the plan, no mention is made which designates any particular holder. Therefore, since the Plan of Reorganization of Ageco provides for participation of the petitioner as a holder of *such* securities (Senior COs and Preferred stocks which were exchanged for CDCs), was he denied due process of law according to the terms stipulated under the Plan? (Article II, paragraph 6, subdivision 8.)

III. The word "and" divides the Plan and is supplemented by the addition of "as remain in the hands of Original Holders, the word "and" has often been construed as meaning "or" and has been so treated in the construction of statutes, has the petitioner been denied participation under the incorrect interpretation of the plan by the lower court by confusing the two terms which read as follows:

"a. Such of the following securities of Ageco (COs) as were issued in exchange for the securities enumerated in item 7 (CDCs)?

"b. And as remain in the hands of original holders?"

IV. The Plan further provides for the securities that remain in the hands of original holders by defining them elsewhere but not in the Plan as "Person who originally converted there senior CDCs for COs and Preferred stocks of the same series and by providing participation for the personal representatives, legatees or distributees, or statutory successors of such persons, where the Court below recognized only the rights of original holders by excluding the petitioner classified as a non-original holder because of his purchase of his securities directly or indirectly from an original holder because of a *theory* that the orig-

inal holders *may* have a claim for *rescission* or damages based on fraud or misrepresentation in connection with the exchange of CDCs for COs, was the petitioner denied due process of law as a "Statutory or legal successor of an original holder under the Uniform Stock Transfer Act, Statutes of Limitations, Ratifications, Rescission, Laches.

V. Where a *restitution* was made from the Hopson assets for the sum of $20,760,717 in favor of Original Holders in connection with accountings and damages based upon alleged misappropriations of funds, fraud and mismanagement on the part of Howard C. Hopson, John I. Mange and other former officers and directors of Ageco, does this restitution void all claims for rescission or damages based on fraud in connection with the exchange of CDCs for COs in favor of original holders, thereby giving the petitioner the rights to participate under the plan with the rest of the participants as a holder of the same series of securities?

VI. Where the court below found a theory for the protection of one group of creditors and stockholders of the senior class called original holders, it denied the present holder of the same series of COs and Preferred stocks by drawing a barrier between original holders and non-original holders, did the court below exceed its power in discriminating against creditors and stockholders of the same class of securities?

VII. Where the court below found that under the New York law, "a claim for fraud or misrepresentation in connection with an obligation evidencing a debt does not pass merely with the transfer of the obli-

gation itself where there are lacking special words of assignment: forecloses non-original holders of COs, of whatever series, from asserting any such claim," was the petitioner denied due process of law based on the fact that "Associated Gas and Electric Company (Ageco) is principally a public utility holding company purchasing, distributing and selling electric energy with activities extending over many states and the Philippine Islands, their use of the instrumentalities of interstate commerce and wide geographic distribution of their security holders, make difficult, if not impossible State regulation of such companies and is subject to the Federal Holding Securities and Exchange laws governing the negotiability of negotiable instruments under the Bankruptcy Act, Public 696, 75th Congress, thereby allowing the securities in question participation with the rest of the original holders?

VIII. Where the court below states that a "Statutory successor" is a phrase of art and as such is used to designate "the person to whom the assets of a corporation pass upon dissolution" and it appears, is one standing in relation to the original corporate holder in the same manner as a distributee stands in relation to a deceased individual holder, would the following facts by due process of law prove that:

Principale, who [illegible]d his securities through legal transaction from [illegible]riginal corporate holder is entitled under the Public Utilities Company Act of 1933 to the assets of Ageco in dissolution and as the holder of the securities involved is the person designated in the statutes of incorporation of Ageco which entitles him as the legal holder of the $7 Divi-

dend Preferred Stock in the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the Corporation the sum of One Hundred Dollars ($100.00) per share, and in each case, an amount equal to the unpaid cumulative dividends thereon accrued respectively to date of payment, further, provisions are made for any successor corporation with respect to the conversion in the case of the Convertible Obligations due 2002, 6% and 7%, series A, to be payable by stocks or assets • • • Would the fact that Principale, standing in the shoes of the original holder who forfeited his rights to restitution and is barred from a cause of action involving fraud or misrepresentation in the conversion of his CDCs into COs because of the Statutes of Limitations and that the equities of Principale who contracted on the faith of the fraudulent securities is superior to that of the original holder under Ratification, Rescission, Laches, thereby entitling Principale who stands in relation to the original corporate holder in the same manner as a distributee stands in relation to a deceased individual holder as the person designated in the excerpts of Incorporation of Ageco to the assets of the corporation which had at the time of the consummation of the Plan of Reorganization consolidated assets of over three-quarters of a billion dollars, thereby providing full asset cover age for the securities owned by Principale?

C. *Reasons for Granting the Writ.*

I. The decision of the court below involves the important question of the interpretation and construction of the Plan of Reorganization, original holder versus non-original

holder, the Constitutional application of the Bankruptcy Act of the United States involving the negotiability of negotiable instruments and the question of asset-coverage of Ageco which discriminated in favor of one group of security holders of the same series as against the securities held by the petitioner under the Public Utilities Company Act of 1933.

The very language of the Plan should allow the petitioner as a holder of "Such of the following securities of Ageco (COs) as were issued in exchange for the securities enumerated in item 7 (CDCs) participation. However, the Court exceeded its power by discriminating against creditors and stockholders of the same series whereby both original and non-original holders of the same class of securities could and should have shared alike.

The Court has held the term "And as remain in the Hands of Original Holders" the dominant feature of the Plan by using it as a club over the securities held by the petitioner (a non-original holder), by so doing it has set a precedent by violating the Constitutionality of the Federal Bankruptcy Act in relation to the negotiability of negotiable instruments such as are owned by Principale. Whether or not the securities were acquired by purchase in the open market is not a conclusive fact in expunging his claim under the terms of the Plan as a bona-fide purchaser of such securities which had sufficient asset coverage for full face-amount payment and discharge of the securities held by Principale.

The acquisitions of his securities by purchase in the open market were made for investment and with respect to market conditions only, the financial condition of Ageco with consolidated assets of over three-quarters of a billion dollars not including the payment of war damages for claims arising in the Philippine Islands of $400,000,000 indicated

full coverage with sufficient assets to provide the face-amount of Principale's securities and an amount equal to the unpaid cumulative dividends thereon accrued.

With respect to the cases cited by the lower court, the rights of the petitioner as a holder of senior COs securities of Ageco due 2002 and the $7.00 Dividend Series Preferred stocks were violated as a result of the drawing of a line of demarcation as between an original holder and a non-original holder.

The purchase of Principale's securities were sporadic and not timed with respect to any significant step or development in connection with the claim allowed the original holder for rescission based on fraud or misrepresentation in connection with the exchange of CDCs for COs. As a matter of law, such a purchase gives the petitioner the same legal rights to participation in connection with the related CDCs or the COs as a successor of an original holder by due process of law under the Uniform Stock Transfer Act, Statutes of Limitations, Ratification, Rescission, Laches, the assignment vests in the petitioner the same rights as the original holder. The original holder failed to exercise care and vigilance to discover fraud in the conversion of CDCs for COs, and if upon having discovered it, failed to act promptly in repudiating his exchange. "There must be no laches." Under the Plan the petitioner having acquired these rights for a valid consideration and in good faith should be treated on a parity with security holders of the same series.

Whether the theory of protecting one group of security holders of senior COs (original-holders) while disallowing participation for another group of COs of the same series (non-original holders) because the original holders may have a claim for rescission or damages based on misrepresentation or fraud in connection with the exchange of CDCs for COs under the New York law, is in contradiction

with the Bankruptcy Act of the United States. Bankruptcy Act No. 696, 76th Congress, Section 70(D) provides that:

> "A person asserting the validity of a transfer under this subdivision shall have the burden of proof. Except as otherwise provided in this subdivision and in subdivision g of section 21 of this Act, no transfer by or in behalf of the bankrupt shall be valid against the trustee: Provided, however, that nothing in this Act shall impair the negotiability of currency or negotiable instruments."

The Convertible Obligations due 2002, Series A, 6% and 7% and preferred stock of the same class should be allowed treatment in reorganization with the securities of the same class. There was no need of preference as between the original holder and the non-original holder on a claim for rescission based on fraud since a restitution from the Hopson assets in 1941 and 1942 put all the security holders of the same class on a parity basis.

Acquisition During Proceedings.

> "(3) A person having actual knowledge of such pending bankruptcy shall be deemed not to act in good faith unless he has reasonable cause to believe that the petition in bankruptcy is not well founded."

The petitioner's acquisition of his securities by purchase in the open market prior to, during or subsequent to 1939 were made for investment and with respect to market conditions only, and not in contemplation of the plan; the financial condition of Ageco with consolidated assets of over three-quarters of a billion dollars were such as to indicate full coverage of his securities purchased.

Principale was frozen out and discriminated against participating under the Plan of Reorganization as a holder of the senior Convertible Obligations of Ageco 2002, series A and the Preferred stocks of the same series by dividing original and non-original holders.

If the consolidated assets of Ageco of over three-quarters of a billion dollars provided for one group of holders of the senior COs defined as original holders, these same assets show that the financial conditions of Ageco indicated full asset coverage for Principale without freezing him out of the Plan * * * Either all senior holders of the securities involved should have been left out of the Plan * * * or both groups of the same series should be allowed participation * * * Priority and discrimination has been allowed by the lower court in favoring original holders as against the petitioner, a non-original holder (a security).

The mere fact that Principale obtained his securities in the open market for a fair consideration entitles him to all the rights of the original or any successive holders of his senior COs and preferred stocks. If the original holder had any claim for rescission based on fraud or misrepresentation in connection with the conversion of his CDCs into senior COs due 2002 and preferred stocks of the same series, in practice he severed all his rights to sue or to enjoy the fruits of the new stocks of General Public Utilities Corporation. Further, a restitution from the Hopson assets in 1941 and 1942 foreclosed all further claims on the part of original holders. Original or non-original holders of the securities in question should be treated alike under the plan of reorganization of Ageco. The petitioner becomes under the Uniform Stock Transfer Act, Statutes of Limitations, Ratifications, Rescission, Laches, a legal or

statutory successor of an original holder, and as a holder of the securities in question which provide in the case of the $7 Dividend Preferred Stock of Ageco in the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) the sum of One Hundred Dollars ($100.00) per share, and in each case an amount equal to the unpaid cumulative dividends thereon accrued and in the case of the senior Convertible Obligations upon conversion to be payable by stocks or assets. In view of the consolidated assets of Ageco of over three-quarters of a billion dollars the petitioner is entitled under the Public Utilities Company Act of 1933 and under the provisions made binding under the statutes of Incorporation of Ageco to full asset coverage plus unpaid cumulative dividends accrued thereon.

In view of the clear conflict and the importance of determination by this court in determining a fair hearing involving the interpretation of the Plan of Reorganization of Ageco relative to the senior Convertible Obligations, Preferred stocks and the related Convertible Debenture Certificates of Ageco, negotiable instruments and full asset coverage for holders of the same class of securities without discriminating as between original security holders and non-original holders will serve as a precedent and guide for the National Bankruptcy Act and the Public Utilities Company Act of 1933, as well as adjudicate the rights of the petitioner.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under seal of this Honorable Court and that said order of the Circuit Court of Appeals may be reversed or modified by this Honorable Court, and that your petitioner may have such and further

relief in the premises as to this Court may seem just and proper.

New York, January 21, 1948.

JACK PRINCIPALE,
Petitioner pro-se.

SCHEDULE A

Assets of Associated Gas and Electric Company (A. G. & E. Co.) and Subsidiaries

Associated Gas and Electric Co. owns the entire capital stock of Associated Gas and Electric Corp. As of Dec. 1, 1945, latter company, an intermediate holding organization, controlled the following subsidiaries through ownership, directly or indirectly, of the percentages of voting stock stated below:

	Percent
Associated Electric Co.	100
Arizona General Utilities Co.	100
*Eastern Land Corp.	100
†Escudero Electric Service Co.	100
*Indiana Gas Utilities Co.	100
†Manila Electric Co.	100
‡Assoc. Util. Investing Corp.	100
*Missouri General Utilities Co.	100
Pennsylvania Electric Co.	100
Citizens Transit Co.	100
Nineveh Water Co.	100
General Gas & Elec. Corp.	100
South Carol. Elec. & Gas Co.	100
NY PA NJ Utilities Co.	100
Canadea Power Corp.	100
Glen Rock Elec. Light & Pwr. Co.	100
Metropolitan Edison Co.	100
New Jersey Power & Light Co.	100
*New Jersey Northern Gas Co.	100
Jersey Central Pwr. & Lt. Co.	100
New York State Elec. & Gas Corp.	100
Staten Island Edison Corp.	100

	Percent
Northern Pennsylvania Power Co.	100
Waverly Electric Light and Power Co. (The)	100
Pennsylvania Edison Co.	100
Blair Engineering & Supply Co.	100
Rochester Gas & Electric Corp.	100
Spring Brook Water Co.	100
York Railways Co.	96 00
Edison Light & Power Co.	100
York Steam Heating Co.	100
Associated Utilities Corp.	100
Associated Real Properties, Inc.	100
Railway & Bus Associates (The)	100
Gas & Elec. Associates	100
*Richmond Railways, Inc.	100
Schenectady Railway Co.	28 84
Dover Casualty Insurance Co.	100
Kenka Lake Power Corp.	35 38
*United Coach Co. (The)	100
*Schenectady Rapid Transit, Inc.	100
Valley Public Service Co. (The)	100
*Atlantic Utility Service Corp.	100
Employees Welfare Association, Inc. (Del.)	100
Employees Welfare Assn., Inc. (N. J.)	100
Associated General Utilities Co.	

• • • • •

* Inactive.

† Properties located in the Philippine Islands.

‡ Dissolution would become final in January, 1946.

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

ALLEN E. THROOP, *Attorney for* General Public Utilities Corporation, As Successor to Associated Gas and Electric Company and Associated Gas and Electric Corporation,

Respondent.

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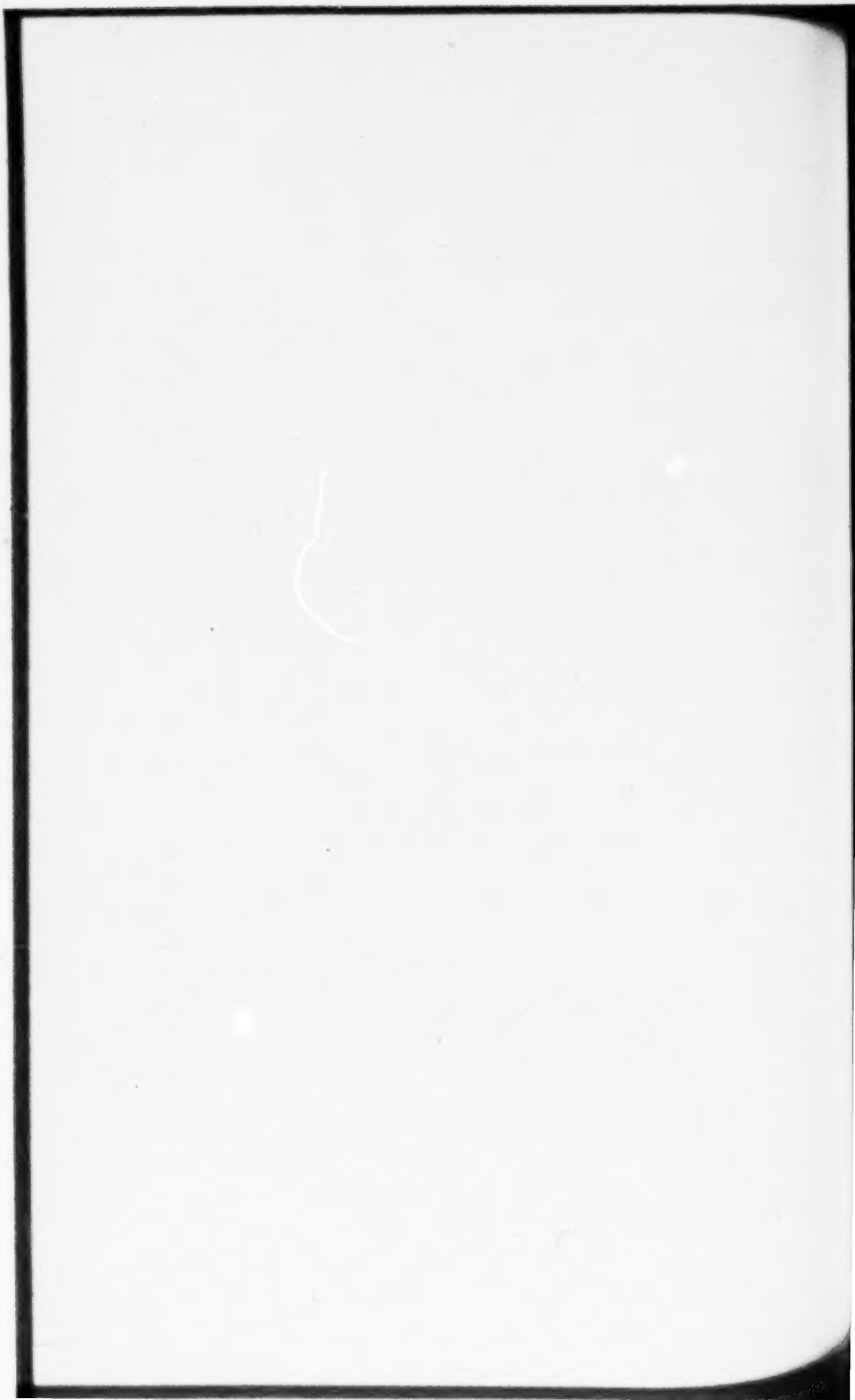
THE SORG PRINTING CO., INC., NEW YORK, N. Y.



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BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 15-16) is reported in 164 F. (2d) 220.

The Opinion of the United States District Court for the Southern District of New York (R. 5a-12a) is reported in 71 F. Supp. 538.

Jurisdiction

Jurisdiction of this Court is apparently invoked by the Petitioner under Sec. 24(a) of the Judicial Code, 28 U.S.C.A. 347(a). The judgment of the Circuit Court of Appeals was dated November 20, 1947. The Petition for a Writ of Certiorari was filed on January 29, 1948.

Statement

(a) Nature of the Controversy

This controversy arises in proceedings for the reorganization of Associated Gas and Electric Company (herein called "Ageco"), pursuant to Chapter X of the Bankruptcy Act.[1]

The issue is whether the Petitioner is entitled to participate under the terms of the Plan of Reorganization as owner of certain Ageco 6% Convertible Obligations, certain shares of Ageco $7 Dividend Series Preferred Stock and certain Ageco 7% Convertible Obligations. The Order of the United States Circuit Court of Appeals affirmed an Order of the District Court which in turn affirmed an Order of a Referee in Bankruptcy denying the claim of the Claimant to participate under the Plan of Reorganization as owner of said securities.

(b) The Plan of Reorganization

The Plan of Reorganization provided for the reorganization of Ageco and of its subsidiary, Associated Gas and Electric Corporation. It provided that all securities issued by said subsidiary should be entitled to participate under the Plan. The Plan provided for participation by certain

---

[1] A Petition of Ageco for its reorganization under Chapter X of the Bankruptcy Act was filed and approved January 10, 1940 and proceedings for its reorganization were conducted in the District Court of the United States for the Southern District of New York before District Judge Vincent L. Leibell. A Plan of Reorganization of Ageco, approved by the Securities and Exchange Commission under Section 11(f) of the Public Utility Holding Company Act of 1935 (Release No. 4985) by Order (Docket No. 52-22) dated April 14, 1944, was approved and confirmed by said District Court by Orders entered September 15, 1944 and August 10, 1945, respectively. Pursuant to the Order of said District Court dated January 10, 1946, said Plan of Reorganization was on January 14, 1946 consummated as of January 1, 1946.

Ageco securities and excluded the remaining Ageco securities. However, certain of the excluded securities, but only in the hands of certain holders, were allowed participation under the Plan pursuant to the provisions of Item 8 of Paragraph 6 of Article II of the Plan (R. 4a). Participation was allowed under such item to

> "8. Such of the following securities of Ageco as were issued in exchange for the securities enumerated in Item 7[2] and as remain in the hands of Original Holders:
>
> 7% Convertible Obligations due 2002, Series A
> 6½% Convertible Obligations due 2002, Series A
> 6% Convertible Obligations due 2002, Series A
> 6% Convertible Obligations due 2002, Series B
> $6 Dividend Series Preferred Stock
> $6.50 Dividend Series Preferred Stock
> $7 Dividend Series Preferred Stock
> $6 Cumulative Preference Stock"

The phrase "Original Holder" which appears in Item 8, quoted above, is defined in the Plan (R. 4a), as follows:

> "Original Holders: Persons to whom Convertible Obligations of Ageco due 2002, 6%, 6½% and 7% issues of Series A and 6% issue of Series B or Ageco preferred and preference stock were originally issued in exchange for Ageco Convertible Debenture Certificates, 6½% Series B and C (Manila Series), 6% Series, A, B, C, D, E, F, Series B of 1929, or 1931 Series, or their personal representatives, legatees or distributees, or statutory successors."

---

[2] The securities enumerated in Item 7 consist of various issues of Convertible Debenture Certificates and one issue of Convertible Debenture Obligations, all of which are herein collectively referred to as "Convertible Debenture Certificates".

(c) Petitioner's Claim

Petitioner claims to be entitled to participate under the Plan of Reorganization as the holder of certain securities which are of the issues enumerated in the above quoted Item 8 of the Plan. He made none of the exchanges referred to in the above quoted definition of the phrase "Original Holders". As a matter of fact, Petitioner testified he was never the owner of any Convertible Debenture Certificates. Petitioner had no dealings with Ageco. If Petitioner has any claim it must be a claim which he acquired by virtue of his purchase in the market of his securities under the standard form of assignment which was endorsed upon the back of his certificates. The form of assignment appears in the opinion of the District Judge which is reproduced at pages 9a-10a of the Appendix to Petitioner's Brief.

(d) The Findings of the Referee

The District Court Order affirmed an order of Honorable John E. Joyce, Referee in Bankruptcy, dated February 6, 1947, which disallowed the claim of the Petitioner.

The Referee in his Order disallowing the claim made certain specific findings of fact (R. 9a), *inter alia,*

"FINDINGS OF FACT

3. The claimant acquired all of the securities upon which he founds his claim, by purchases in the open market in or during and subsequent to the year 1939.

4. None of the securities which are the subject of the notice of this hearing was acquired by the claimant in exchange for any of the securities of the Debtor listed in subdivision 7 of paragraph 6 of the Plan of Reorganization."

(e) Petitioner's Brief

If Petitioner's brief can be said to contain points which bear upon the controversy, such points relate to Petitioner's contention that he is a personal representative or a statutory successor of Original Holders. No attempt will be made in this brief to discuss the extraneous matter that constitutes the major part of Petitioner's brief, other than to make the comment that the history of the reorganization proceedings in the courts makes indubitably clear the fact that the fairness of the Plan of Reorganization has heretofore been fully passed upon and is no longer a matter for review by this Court. In this connection this Court is respectfully referred to the opinion of the Circuit Court of Appeals for the Second Circuit in *Elias* v. *Clarke*, 143 Fed. 2d. 640. The classification order of the District Court which was reviewed by the Circuit Court of Appeals in *Elias* v. *Clarke* provided in paragraph 1 as follows:

> "a. Holders of Ageco Convertible Obligations, Series A and B, due 2002 (excepting persons to whom such Ageco Convertible Obligations, Series A and B, were originally issued in exchange for Convertible Debenture Certificates, 6½% Series B and C (Manila Series), 6% Series, A, B, C, D, E, F of 1929, and 1931 Series, and 6% Convertible Debenture Obligations, Series F, and who still hold the Convertible Obligations issued to them or their personal representatives, legatees, or distributees, or statutory successors), be and hereby are classified as holders of securities junior and subordinate, both as to principal and interest, to the general creditors of Ageco, except holders of obligations convertible at Ageco's option into stock.
>
> b. Holders of Ageco $7 Dividend Series Preferred Stock, $6.50 Dividend Series Preferred Stock, $6 Cumulative Preference Stock, $5 Dividend Series Preferred Stock, $5.50 Dividend Series Preferred

Stock, and $6 Dividend Series Preferred Stock (excepting persons to whom such stock was originally issued in exchange for Convertible Debenture Certificates, 6½% Series B and C (Manila Series), 6% Series A, B, C, D, E, B of 1929, and 1931 Series, and 6% Convertible Debenture Obligations, Series F, and who still hold the stock so issued to them, or their personal representatives, legatees or distributees, or statutory successors), be and hereby are classified as holders of Preferred and Preference Stock of Ageco."

The Opinion of Circuit Judge Clarke in *Elias* v. *Clarke* is singularly pertinent to the instant application. Judge Clarke stated at page 644 of 143 Fed. 2d:

> "(3, 4) Turning, therefore, to the merits, we find ourselves initially in accord with the view that under the governing New York law a claim for fraud or misrepresentation in connection with an obligation evidencing a debt, whether for damages or for rescission, does not pass merely with the transfer of the obligation itself, where there are lacking special words of assignment of the claim. Here the bonds were transferred upon execution of a usual and stereotyped form of bond transfer, found on the back of the certificate, which only purported to assign and transfer 'the within Convertible Obligation.' That this is insufficient as an assignment is the precise holding of Abel v. Paterno, 245 App. Div. 285, 281 N.Y.S. 58, and is the substantial effect of a series of cases in the Court of Appeals involving various claims against trustees for bondholders for different forms of wrongful acts, cases of which the latest is Smith v. Continental Bank & Trust Co. of New York, 292 N.Y. 275, 54 N. E. 2d, 823, and which we discussed at some length in Manufacturers Trust Co. v. Kelly, 2 Cir. 125 F. 2d 650, certiorari denied 316 U.S. 697, 62 S. Ct. 1293, 86 L. Ed. 1766."

Following the denial by the Supreme Court of the United States (323 U.S. 778) of an application for a writ of certiorari to this Court's determination in the above-mentioned case of *Elias* v. *Clarke,* another attack was made by the same group of non-original holders and their associates upon the Plan of Reorganization. The second attack was based upon the general premise that the Plan was unfair and defective in various respects. The Circuit Court of Appeals (149 Fed. 2d. 996) affirmed the District Court's ruling (61 Fed. Supp. 11) that the Plan was fair. The Supreme Court of the United States again denied the application of the same appellants for a writ of certiorari (326 U.S. 736).

The Circuit Court of Appeals in passing upon the fairness of the Plan, 149 Fed. 2d. 996, at page 1007, stated that:

> "Original holders of COs received their bonds in exchange for CDCs, and are granted participation in the assets on the theory that they may have a claim for rescission or damages based on fraud or misrepresentation in connection with the exchange. The statement in the case of Elias v. Clarke that under the New York law 'a claim for fraud or misrepresentation in connection with an obligation evidencing a debt * * * does not pass merely with the transfer of the obligation itself, where there are lacking special words of assignment * * * ; forecloses non-original holders of COs, of whatever series, from asserting any such claim.' "

After the expiration of time to seek review of the various orders holding the Plan to be fair, requiring claims to be filed or be barred and generally administering the estate of Ageco, the District Court directed by Order dated January 10, 1946, the Plan to be consummated and, pursuant thereto, the Plan was on January 14, 1946 duly consummated as of January 1, 1946.

Question Presented

In the instant case the Circuit Court of Appeals decided that the facts conclusively establish that the Petitioner is not entitled to participate under the terms of the Plan of Reorganization. In arriving at this conclusion the Circuit Court of Appeals for the third time gave effect to the provisions of the Plan excluding non-original holders of securities such as the Petitioner owns, the validity of which is no longer properly the subject of review. *Elias* v. *Clarke,* 143 F. (2d) 640, 644, cert. denied 323 U.S. 778; *In re Associated Gas & Electric Co.,* 149 F. (2d) 996, 1007, cert. denied sub nom. *Elias* v. *Clarke,* 326 U.S. 736; *Principale* v. *General Public Utilities Corporation,* 164 Fed. (2d) 220.

The question presented is whether the Circuit Court of Appeals erred in its determination.

ARGUMENT

Petitioner is not entitled to participate under the terms of the Plan of Reorganization.

Petitioner had no dealings with Ageco and does not seek participation under the Plan of Reorganization except as the holder of certain Convertible Obligations and Preferred and Preference Stocks. If Petitioner is not entitled to participation under the above quoted Item 8 of the Plan, he is not entitled to any participation.

Petitioner's own testimony establishes that he was not the owner of any Convertible Debenture Certificates and that he acquired his Convertible Obligations and Preferred and Preference Stocks by purchases in the market. Petitioner testified that he is acting only for himself and that any recovery that he effects will be his property and thereby establishes that he is not a personal representative. Peti-

tioner states that he is a statutory successor of persons who made the requisite exchanges. But the phrase "statutory successor" applies only to certain forms of succession to corporate property. There is no showing or claim that there was any succession from any corporation of ownership of any of the securities. The record is singularly barren of any reference to mergers, consolidations or dissolutions of corporations. See Words and Phrases (Perm. Ed., Vol. 40, page 111). See also "Succession", Bouvier Law Dict., 8 Ed. (1914) 3176 and Restatement, Conflict of Laws, Section 161 and Comment (a).

Petitioner devotes part of his brief to a nebulous claim that persons who had made exchanges of Convertible Debenture Certificates for Convertible Obligations had thereby obtained certain fraud claims which in some way devolved upon Petitioner and therefore, Petitioner urges, he is entitled to participation, apparently as some sort of general creditor. There was no fraud in the exchanges (see reference to ruling of the Special Master which is found at page 640 of the Circuit Court of Appeals decision in 143 Fed. 2d). Further, the Circuit Court of Appeals decided that even if there had been fraud in the exchanges, claims based thereon did not pass by the form of assignment under which Petitioner acquired his securities (143 Fed. 2d. at page 644). Even if there were any such claims and Petitioner was entitled to enforce them, such claims would be general claims and all general claims have been barred from participation by various Bar Orders of the District Court.

Conclusion

The decision of the Circuit Court of Appeals is correct and gives effect to the terms of a plan of reorganization which this Court has twice refused to review. Furthermore, the decision is a determination of a question of fact applicable only to particular circumstances and involves no question of general importance and no conflict between decisions of state and federal courts or between federal courts of different circuits. Respondent therefore respectfully requests that the petition for a writ of certiorari be denied.

Dated: February 24, 1948.

Respectfully submitted,

ALLEN E. THROOP,

Attorney for General Public Utilities Corporation, As Successor to Associated Gas and Electric Company and Associated Gas and Electric Corporation,

Respondent.

E. ROBERT WILLCOX,
Of Counsel.

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No. 554

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Supreme Court of the United States

OCTOBER TERM, 1947

JACK PRINCIPALE,

Petitioner,

—v.—

GENERAL PUBLIC UTILITIES CORPORATION as Successor to Associated Gas and Electric Company and ASSOCIATED GAS AND ELECTRIC CORPORATION,

Respondents.

PETITION FOR REHEARING

JACK PRINCIPALE,
Petitioner pro-se.

No. 554

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Respondents.

PETITION FOR REHEARING

Claimant respectfully petitions that the Court grant it a rehearing in the above-entitled appeal. As grounds for this request the claimant-appellant respectfully alleges:

The Petitioner's dealings with Associated Gas and Electric Company were in the recognized order of purchases of outstanding securities held in the hands of the general public and purchased in the open market at prevailing and fluctuating prices which is the general practice of free enterprise governed by The Uniform Stock Transfer Act and The Bankruptcy Act—(Public No. 696—75th Congress) approved July 1, 1898.

It is respectfully urged that this Act requires upon rehearing that the Petitioner is entitled to participate under the Plan of Reorganization of Ageco as the legal holder in due course of the 6% and 7% Convertible Obligations due 2002, Series A and the $7.00 Dividend Series Preferred Stock of the same series. Participation should be based on

the high market range for the year 1946 with respect to all rights to liquidations and dividends thereon accrued.

The aforementioned securities now held by the Petitioner were called in for conversion in 1932. However, the Petitioner acquired these securities from the general public, some were original holders, others were not—but, such of the following securities which are now owned by the Petitioner,

> 7% Convertible Obligations due 2002, Series A
> 6% Convertible Obligations due 2002, Series A
> $7.00 Dividend Series Preferred Stock

were issued in exchange for the 6% and 7% Convertible Debenture Certificates and were called in for conversion in 1932 and which according to the terms of the Plan are Participating Securities, therefore, the Petitioner, as the owner of such securities, COs which were exchanged for CDCs participates under the terms of the Plan.

The Plan of Reorganization of Ageco reads:

> SUCH OF THE FOLLOWING SECURITIES OF AGECO (COs) AS WERE ISSUED IN EXCHANGE FOR THE SECURITIES ENUMERATED IN ITEM 7 (CDCs) And As Remain In The Hands Of Original Holders: (See Excerpts From Plan of Reorganization on pages 3 and 4 in the Appendix to Appellant's Brief).

In determining the values of the Petitioner's class of securities, their contract rights with respect to distribution of assets on redemption on liquidation of the enterprise no weight or liquidation was given to the Petitioner's securi-

ties, these Senior Convertible Obligations were divided into two classes, one called Original Holders, the other classified as non-Original Holders. If there were sufficient assets to cover the Original Holders of these Senior Obligations, would it be unfair and inequitable to deny the Petitioner his contractual rights with respect to the distribution of these same assets?

The Circuit Court of Appeals erred in its determination in excluding the Petitioner a non-original holder from participation under the Plan of Reorganization of Ageco on the theory that under the New York law "a claim for fraud or misrepresentation in connection with an obligation evidencing a debt * * * does not pass merely with the transfer of the obligation itself, where there are lacking special words of assignment * * *; forecloses non-original holders of COs, of whatever series, from asserting any such claim." (Page 9 of Appendix to Appellant's Brief.)

In the brief for Respondent in opposition, the Attorney for General Public Utilities Corporation states on page 9 that:

> There was no fraud in the exchanges (see reference to ruling of the Special Master which is found at page 640 of the Circuit Court of Appeals decision in 143 Fed. 2d).

Both statements contradict each other, however, since these statements were used in excluding the petitioner from participation under the Plan, it stands to reason that if there has been no fraud in the exchange of CDCs for COs, then special words of assignment are not necessary. The assignment evidenced by the form on the reverse side of the Petitioner's securities entitles him to enforce his claims as a participant under the Plan or under General Claims, or in

the determination of values with respect to the distribution of assets on redemption or liquidation of the enterprise.

Most of the securities owned by the Petitioner were issued in exchange for the 6% and 7% Convertible Debenture Certificates, series A, of Associated Gas and Electric Company. The $7 Dividend Series Preferred Stock were issued per Requisition #NMX-436 and #NAX-85 Original Issues of G. E. Employees Securities Corporations and Electrical Securities Corporation. Therefore, if there was no fraud in the exchanges of these securities from CDCs into COs, then the Petitioner has been unlawfully denied his claims. DX 647 is one of the Convertible Obligations acquired by the Petitioner from the Original Holder, it was registered in the name of Bessie M. Zechman for $3,300 principal amount. It was issued on June 10, 1932 in exchange for a 6% Convertible Debenture Certificate, Series A, of Associated Gas and Electric Company. Since there was no fraud involved in the exchange according to the argument presented by the Respondent on page 9 of his brief, then, all that is necessary to make the transaction complete is the transfer evidenced on the back of Certificate DX 647, special words of assignment are not necessary. The Petitioner's rights to the assets are equal to that of the original holder of Certificate DX, registered in the name of Bessie W. Zechman.

The question of the Constitutional rights of the Petitioner as to his rights of a legitimate transfer as provided in (Public No. 696—75th Congress) of the Bankruptcy Act, Sections 70 (D) 1 and 5 which states that:

> "(1) A transfer of any property of the bankrupt, other than real estate, made to a person acting in good faith, shall be valid against the trustee if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent

of the present consideration actually paid therefor, *for which amount the transferee shall have a lien upon the property so transferred*:

"(5) Provided, however, That nothing in this Act shall impair the negotiability of currency or negotiable instruments."

Furthermore, should the claim of the Petitioner be denied, as a legal successor of an Original Holder with a valid claim against General Public Utilities to the corporate property in question, the fact that discrimination was shown by allowing one group of Original Holders of senior COs totaling $20,000,000 and 17,500 shares to participate under the Plan while depriving $22,090,000 Non-Original Holders and 623,867 Holders of the $6, $6½ and $7 Preferred shares to be frozen under the Plan because of an unjust theory that the Original Holders may have a claim for fraud in connection with the exchange, a statement which is inconsistent with the ruling of the Special Master and the Respondent in the argument on page 9 which states *that there was no fraud in the exchanges.* On the basis of a total capitalization of $772,792,493.50 which does not include "Foreign subsidiaries" totaling $21,565,458.32 and appropriations from the United States Government of $400,000,000 for payment of War Damage claims arising in the Philippine Islands which indicates equity in excess of the new Capitalized General Public Utilities Corporation which consists of 10,000,000 shares of $5 par value of which 7,536,500 shares will be issued to holders of, and general claims against, Ageco and Agecorp, leaving a total of 2,463,500 shares in reserve for issuance subject to the order of the United States District Court for the Southern District of New York. These facts prove conclusively that while giving one group of public security holders preference over the same class of public held securities of the

Petitioner by denying his equity rights, the fact that the total Capitalization Value of Ageco including the assets of the Foreign Subsidiaries of over three-quarter of a billion dollars was well in excess of the capitalization of the succeeding company General Public Utilities Corporation and if distributed on the liquidation of the enterprise, the claim of the Petitioner in relation to his holdings of the 6% and 7% Convertible Obligations and $7 Preferred Stocks would allow him the full capitalized value of his securities including unpaid cumulative dividends.

In view of the small amount of Original Holders which total to about less than 8% who have exchanged their Public held COs for the new securities of General Public Utilities Corporation, in view of the large amount of securities of the said Corporation which are left undisturbed and reserved for issuance subject to the order of the United States District Court for the Southern District of New York, in view of the fact that there was no fraud in the conversion of CDCs for COs and in view of the fact that the Total Capitalization of Ageco was well in excess of the new General Public Utilities Corporation, the Petitioner leaves to this Court the question of:

1. Whether he is a participant under the Plan of Reorganization.
2. Whether his claims are General Claims.
3. Whether on the basis of the liquidation of the enterprise the Petitioner in relation to his holdings is entitled to the full face value of One Hundred Dollars ($100.00) per share, and an amount equal to the unpaid cumulative dividends thereon accrued. (See Schedule A on page 17 of Petitioner's Petition For Writ of Certiorari.)

CONCLUSION

The decision of the Circuit Court of Appeals and the Respondent state that no fraud existed in the exchanges of Convertible Debenture Obligations for Convertible Obligations, therefore, *no special words of assignment are necessary on the back of the securities involved.* The Petitioner is, according to the terms of the Plan of Ageco, a participant as the legal holder of CDCs which were exchanged for COs during the Conversion in 1932. The rights of the Petitioner are equal to that of the Original Holder. The constitutionality of negotiable instruments under the Congressional Act of 1898 is a matter for this Court to decide. The question of general importance to be decided regardless of the fact that the lower Court approved the Plan of Reorganization, is the fact that the capitalized value of the securities of Associated Gas & Electric Company on the Liquidation Value of the enterprise was well in excess of the new Capitalized General Public Utilities Corporation. Petitioner therefore respectfully prays that a petition for a rehearing will be granted.

Dated: March 25th, 1948.

Respectfully submitted,

JACK PRINCIPALE,
Petitioner.

Certificate of Counsel

I, JACK PRINCIPALE, petitioner pro-se, do hereby certify that the foregoing petition for a rehearing is presented in good faith and not for delay, and is restricted to grounds not previously presented.

JACK PRINCIPALE
Petitioner